

REMARKS

New claim 55 has been added to the application to provide for a hard boiled candy composition in which the partially hydrogenated vegetable oils or saturated fats are identified as an unpleasant mouthfeel suppressing agent and the language "consisting essentially of" is employed for the purpose of indicating that the partially hydrogenated vegetable oils or saturated fats are the only agents present for suppressing unpleasant mouthfeel. Support for new claim 55 can be gleaned from the entire application and particularly from the Examples which show the presence of a partially hydrogenated vegetable oil or saturated fat as the only unpleasant mouthfeel suppressing agent. Entry of new claim 55 is therefore deemed proper and is respectfully requested.

Applicants are cognizant that new claim 55 is being added in response to a final Office Action. However, as indicated above, there is support for the claim and the new claim does not seek to broaden the scope of the present invention. Entry and consideration in response to the final Office Action is therefore deemed proper.

Claims 1 and 28 stand rejected under 35 USC Section 112, first paragraph, as failing to comply with the written description requirement. A statement is made that "a chemically induced unpleasant mouthfeel" was not "described" in the specification. Applicants disagree. One of ordinary skill in the art would note from the particular unpleasant mouthfeel effects (page 5, lines 1-2) that these would be chemically

ARK:jsg021606/1901055.AMDFOA

induced as opposed to physically induced. It is well recognized that the claims of the application need not claim the invention in the precise words of the specification. As indicated above, there is a clear basis in the specification for the wording that is now employed in all of the claims including new claim 55.

Claims 1, 2, 4-9, 28, 29 and 31-36 stand rejected as obvious over Katsuragi (EP 0732064) in view of Oravainen (WO 91/07100). The Office Action states that Katsuragi discloses a palm oil comprising a dissolved ester of a mono/di-glyceride with a carboxylic acid or salt which is added to the candy composition to reduce bitterness. It is further stated that because the ester is dissolved in the palm oil, Katsuragi teaches adding the palm oil for the purpose of providing an agent effective to relieve bitterness. Oravainen is stated to teach that it is advantageous to add oil to a hard candy to prevent sticking and provide opacity. The Office Action concludes that Katsuragi provides motivation for dissolving the ester in oil, and obtaining an oil effective to suppress bitterness and Oravainen provides further motivation to add oil to hard candy to prevent sticking and provide opacity. The rejection is hereby traversed and reconsideration is respectfully requested.

Applicants' invention involves the use of one or more partially hydrogenated vegetable oils or saturated fats to coat a botanical (which is known to cause a chemically induced unpleasant mouthfeel due to burning, astringency, etc.) which accomplishes two purposes. First, coating by the hydrogenated vegetable oil or saturated fat suppresses the unpleasant mouthfeel of the botanicals induced by their

chemical make up. Second, the coating preserves the functionality of the botanical so that the beneficial effect of the active agent can be realized.

It would be understood by those of ordinary skill in the art that the partially hydrogenated vegetable oil or saturated fat provides a physical coating of the botanical. The coated botanical is added to the components of the hard boiled candy in a manner which preserves the coating on the active so that the dual function of the coating can be realized in the hard boiled candy composition.

Katsuragi takes a separate and distinct unpleasant mouthfeel suppressing agent and dissolves it in palm oil. This solution is then added to the other components of the composition to provide a bitterness-relieving effect.

It is quite clear from Katsuragi that the ester of a mono/di-glyceride with a carboxylic acid or salt is the bitterness relieving agent and that the palm oil is merely used as a carrier. When the bitterness relieving agent is dissolved in the carrier, the resulting solution is different than either of the components which make up the solution. One of ordinary skill in the art would appreciate that Katsuragi teaches a bitterness relieving agent in combination with a liquid carrier. There is certainly no teaching or suggestion in Katsuragi that the di-glyceride bitterness relieving agent could be omitted and a bitterness relieving effect still obtained.

Oravainen discloses the addition of conventional processing agents and additives such as vegetable fat to a hard candy composition. There is no discussion

in this reference of the addition of botanicals or any other bitter agent. One of ordinary skill in the art would not be motivated to add an agent which diminishes stickiness and improves appearance for the purpose of suppressing the unpleasant mouthfeel associated with a bitter agent induced by its chemical makeup. The combination of Oravainen and Katsuragi does not lead one of ordinary skill in the art to the claimed invention.

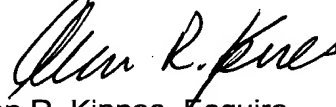
If one of ordinary skill in the art wished to relieve bitterness from a botanical, the skilled artisan would definitely include the di-glyceride as the bitterness relieving agent. This bitterness relieving agent would be dissolved in a carrier such as vegetable oil which would be viewed from the Oravainen reference as a suitable additive. However, one of ordinary skill in the art would not arrive at the claimed invention thinking that the vegetable oil alone could be used to suppress unpleasant mouthfeel. Neither Katsuragi nor Oravainen provides any motivation for practicing the claimed invention, especially when the vegetable oil/saturated fat is the only component present in the composition which suppresses the unpleasant mouthfeel.

In view of the foregoing, Applicants submit that the present application is in condition for allowance and early passage to issue is therefore deemed proper and is respectfully requested.

ARK:jsg021606/1901055.AMDFOA

It is believed that no fee is due in connection with this matter. However, if any fee is due, it should be charged to Deposit Account No. 23-0510.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Allen R. Kipnes", written over the typed name.

Allen R. Kipnes, Esquire
Registration No. 28,433
Attorney for Applicant

Address All Correspondence to:
Allen R. Kipnes, Esquire
WATOV & KIPNES, P.C.
P.O. Box 247
Princeton Junction, NJ 08550
(609) 243-0330